I. UPDATE ON PRIVATE SCHOOLS

In Green v. Connally, 330 F. Supp. 1150 (D. D.C.) aff'd sub nom. Coit v. Green, 404 U.S. 997 (1971), the court declared that neither IRC 501(c)(3) nor IRC 170 provide for tax-exempt status or deductible contributions to any organization operating a private school that discriminates in admissions on the basis of race. The court permanently enjoined the Secretary of the Treasury and the Commissioner of Internal Revenue from recognizing as exempt from taxation or allowing tax deductible contributions to be made to any organization operating a private school in Mississippi that failed to adopt, publish, and operate under a racially nondiscriminatory policy as to students and that failed to supply the Service with certain information to insure operation on a nondiscriminatory basis. Although the Green injunction was limited to organizations operating private schools in Mississippi, the Service subsequently adopted nationwide procedures requiring that private schools be operated on a racially nondiscriminatory basis in order to be recognized as tax exempt. Rev. Rul. 71-447, 1971-2 C.B. 202; Rev. Rul. 75-231, 1975-1 C.B. 158; Rev. Proc. 72-54; 1972-2 C.B. 834; Rev. Proc. 75-50, 1975-2 C.B. 587.

In 1976, plaintiffs reopened Green, alleging that the Service had failed to comply with the 1971 permanent injunction. They also alleged that the 1971 injunction needed to be modified to carry out the court's declaratory judgment.

At about the same time as the reopening of Green, Wright v. Simon, Civil No. 76-1426 (D. D.C.), was filed seeking to apply nationwide the standards sought by the plaintiffs in reopening Green. Plaintiffs in Wright are the parents of black school children attending public schools in districts undergoing desegregation. They allege that the rules administered by the Service are inadequate to insure that racially segregated private schools, formed or substantially expanded at or about the time of public school desegregation, are denied tax-exempt status. This action was dismissed by the district court for lack of standing to sue. Wright v. Miller, 480 F. Supp. 790 (D. D.C. 1979). However, the Court of Appeals recently reversed the lower court holding that standing existed. Wright v. Regan, __ F. 2d __, 81-2 USTC par. 9504 (D.C. cir. 1981) petition for rehearing denied on August 26, 1981. The Service has requested the Solicitor General to file a petition for certiorari in Wright.

The Green court, on May 5, 1980, supplemented and modified the 1971 permanent injunction, enjoining the Service from according or continuing the tax

exempt status of all Mississippi private schools or the organizations that operate them, including churches, where the schools have been determined, in an adversary or administrative proceeding, to be racially discriminatory or were established or expanded at or about the time of public school desegregation and cannot demonstrate that they do not racially discriminate.

In carrying out the court's revised injunction in Green, the Service notified five organizations operating private schools in Mississippi that the tax-exempt status of each was revoked. Announcement 81-142, 1981-37 I.R.B. 102. The Service also requested information from several churches operating private schools in Mississippi to determine whether the schools are operated in a racially nondiscriminatory manner. By its order dated May 14, 1981, the court granted intervention to the Clarksdale Baptist Church in Green v. Regan.

As a result of motions filed by plaintiffs, the Government, and Clarksdale Baptist Church, proceedings are currently being undertaken before the district court to determine whether the revised injunctive orders should be modified to take into account First Amendment objections raised by the intervening church and the other churches from whom the Service has requested information. It is possible that as a result of these proceedings, the Service may be further enjoined to revoke the tax-exempt status of some churches.

As a result of the Court of Appeals finding the standing in Wright, it is also possible that the Service may be further enjoined to apply rules similar to those in Green which could result in the loss of tax-exempt status to organizations operating private schools in states other than Mississippi.

On October 13, 1981, the U.S. Supreme Court granted certiorari in the cases of Goldsboro Christian Schools, Inc. v. U.S. and Bob Jones University v. U.S. The Court also consolidated the cases for argument. Based on an interpretation of the Bible that it purports to follow, Goldsboro maintains a racially discriminatory admissions policy. Bob Jones University, based upon religious doctrine, maintains a racially restrictive admissions policy and a policy forbidding interracial dating and interracial marriage.

With respect to schools outside of Mississippi, the Service is examining only those where complaints are received or where there is some knowledge by the Service that the school is operating in a discriminatory manner. In examining these schools and reviewing applications for recognition of tax-exempt status from schools outside of Mississippi, the Service is applying the standard that was used

prior to August 22, 1978. If a school has adopted and announced a racially nondiscriminatory admissions policy and has not taken any overt action to discriminate in admissions, the Service concludes that the school has a racially nondiscriminatory admissions policy.

The Service is currently operating under budget restrictions, first appearing in the 1980 Treasury Appropriations Act, that proscribe the formulation or carrying out of any rules, guidelines or similar measures regarding private schools, including the 1978/1979 Proposed Revenue Procedure on Private Schools, unless the particular rules in question were in effect prior to August 22, 1978. The most recent Joint Resolution providing operating funds for the Service, Public Law 97-51, October 1, 1981, continues the restriction but also includes court orders concerning the types of measures the Service is precluded from enforcing through reference to H.R. 4121, the 1982 Treasury Appropriations Act that has been passed by the House but which has not yet been considered by the full Senate. The reference to court orders applies to all orders issued on or after August 22, 1980.